

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD CARBONE and EILEEN KELLY-CARBONE,

X
07-CIV-8741 (RMB)

Plaintiff,

- against -

DEFENDANT DEMANDS
A JURY TRIAL

NEW MILFORD HOSPITAL and JOHN MULLEN, M.D.

Defendants.

DATED: FEBRUARY 26, 2008

X

DEFENDANT NEW MILFORD HOSPITAL'S ANSWER

Defendant, NEW MILFORD HOSPITAL, by and through its attorneys, Heidell, Pittoni, Murphy & Bach, LLP, hereby responds to and answers Plaintiffs' Complaint, as follows:

RESPONSE TO FIRST CAUSE OF ACTION

FIRST: As to the allegations contained in paragraph "1," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

SECOND: As to the allegations contained in paragraph "2," NEW MILFORD HOSPITAL admits that it was and still is a resident of the State of Connecticut.

THIRD: As to the allegations contained in paragraph "3," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

FOURTH: As to the allegations contained in paragraph "4," NEW MILFORD HOSPITAL denies that this Court has subject matter jurisdiction and that the amount in controversy exceeds \$75,000 exclusive of interest and costs.

FIFTH: As to the allegations contained in paragraph "5," NEW MILFORD

HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

SIXTH: As to the allegations contained in paragraphs "6," "7," and "8," NEW MILFORD HOSPITAL admits these allegations.

SEVENTH: As to the allegations contained in paragraphs "9," "10," and "11," NEW MILFORD HOSPITAL denies these allegations.

RESPONSE TO SECOND CAUSE OF ACTION

EIGHTH: As to the allegations contained in paragraphs "12," NEW MILFORD HOSPITAL incorporates by reference its responses to paragraphs "1" through "11" as if fully set forth herein.

NINTH: As to the allegations contained in paragraphs "13," "14," and "15," NEW MILFORD HOSPITAL denies these allegations.

RESPONSE TO THIRD CAUSE OF ACTION

TENTH: As to the allegations contained in paragraph "16," NEW MILFORD HOSPITAL incorporates by reference its responses to paragraphs "1" through "15" as if fully set forth herein.

ELEVENTH: As to the allegations contained in paragraph "17," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

TWELFTH: As to the allegations contained in paragraphs "18" and "19," NEW MILFORD HOSPITAL denies these allegations

FIRST DEFENSE

The undersigned Defendant, NEW MILFORD HOSPITAL, demands that Plaintiffs take nothing from it, that judgment be entered in Defendant's favor, that Plaintiffs' Complaint be dismissed with prejudice, that the undersigned Defendant be awarded its costs incurred in connection with this matter, and for such other and further relief as the Court deems just and proper.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim against NEW MILFORD HOSPITAL upon which relief may be granted.

THIRD DEFENSE

Plaintiffs failed to mitigate their alleged damages, if any.

FOURTH DEFENSE

The alleged actions of NEW MILFORD HOSPITAL were not the direct or proximate cause of any alleged injury suffered by Plaintiffs.

FIFTH DEFENSE

Plaintiffs' injuries, if any, were caused exclusively by the acts or omissions of third parties over whom NEW MILFORD HOSPITAL had no control and for whom NEW MILFORD HOSPITAL cannot be held responsible.

SIXTH DEFENSE

Plaintiffs' damages, if any, were incurred by their own contributory and/or comparative fault, which operates to diminish or bar his recovery.

SEVENTH DEFENSE

Plaintiffs' complaint was filed in the incorrect venue.

EIGHTH DEFENSE

Plaintiffs' have failed to comply with the substantive and procedural laws of the State of Connecticut which should be applied throughout the pendency of this action.

NINTH DEFENSE

Plaintiff lacks personal jurisdiction over this defendant.

WHEREFORE, the undersigned Defendant, NEW MILFORD HOSPITAL, denies that Plaintiff is entitled to recover from her any damages or any other relief sought in Plaintiff's Complaint.

February 26, 2008

THE DEFENDANT:
NEW MILFORD HOSPITAL

By:



BRUCE F. GILPATRICK, ESQ.. (8841)
HEIDELL, PITTONI, MURPHY & BACH, LLP
99 Park Avenue
New York, NY 10016
212-286-8585 (p)
212-490-8966 (f)
bgilpatrick@hpmb.com

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Lisa Adams, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and is employed by HEIDELL, PITTONI, MURPHY & BACH, LLP.

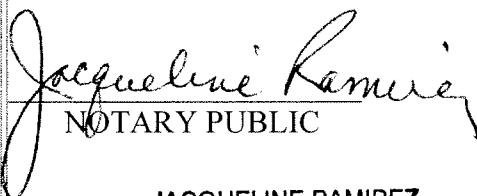
On **February 26, 2008**, deponent served the within **DEFENDANT NEW MILFORD HOSPITAL'S ANSWER AND JURY DEMAND** upon the following attorney(s) at the address(es) designated by said attorney(s) for that purpose by delivering a true copy of same enclosed in a post-paid properly addressed wrapper via certified mail, return receipt under the exclusive care and custody of the United States Postal Service within the State of New York:

TO: Robert G. Spevack, Esq.
150 Broadway, 20th Floor
New York, NY 10038
Attorney for Plaintiffs



LISA ADAMS

Sworn to before me this
26th day of February, 2008



NOTARY PUBLIC

JACQUELINE RAMIREZ
Notary Public, State of New York
No. 01RA6124050
Qualified in New York County
Commission Expires March 21, 2009